Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 87-126

In The
Supreme Court Of The United States

OCTOBER TERM, 1987

ARCHDIOCESAN SCHOOL OFFICE, ET AL.,
Appellant

v.

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES,
Appellee

ON APPEAL FROM THE SUPREME COURT OF CONNECTICUT

MOTION TO DISMISS OR AFFIRM

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QUESTION PRESENTED

Whether the First Amendment's free exercise of religion clause requires the dismissal of a state civil rights commission petition to enforce interrogatories about possible discrimination by a church when the church retains the right to object to specific interrogatories on religious grounds?

ARGUMENT

THIS CASE PRESENTS NO SUBSTANTIAL FEDERAL QUESTION

In this case the Connecticut Commission on Human Rights and Opportunities (CHRO) brought a statutory proceeding in Connecticut Superior Court to enforce interrogatories concerning possible employment discrimination by the appellant Archdiocesan School Office, which had previously failed to answer these interrogatories. Juris. Statement at A-3; Conn. Gen. Stat. § 46a-88; Juris. Statement at A-25. The Superior Court granted the appellant's motion to dismiss, a motion which, under Connecticut practice, normally tests only the adequacy of jurisdiction, venue, and process. *See* Appendix. On appeal the Connecticut Supreme Court made clear that "[t]he only issue before [it] at [the] time was whether the trial court should have dismissed the petition." Juris. Statement at A-8. The Court plainly reserved the possibility that the appellant "may have a cognizable religious reason as well as other grounds for objecting to some of the interrogatories that have been propounded." *Id.* (footnote omitted).

Such a holding does not raise a substantial federal question.[1] Freedom of religious conduct is not absolute, *Bowen v. Roy*, 106 S.Ct. 2147, 2152 (1986), and the minor burden, if any, imposed on the appellant in having to raise its freedom of religion arguments by way of objections to interrogatories rather than by way of a motion to dismiss is surely not one that violates the free exercise clause. *See Johnson v. Robison*, 415 U.S. 361, 383–86 (1974) ("incidental burden" on religious freedom of conscientious objectors by denial of veterans' educational benefits does not violate free exercise clause).

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[1] The CHRO agrees that, apart from the issue of the substantiality of the federal question, this Court has jurisdiction in the strictest sense, since the Connecticut Supreme Court essentially held that the Connecticut statute authorizing a court to take jurisdiction over an interrogatory enforcement action was not unconstitutional. *See* 28 U.S.C. § 1257(2); Conn. Gen. Stat. § 46a-88; Juris. Statement at A-25.

Indeed, the holding here in reality is only a procedural one that fully and properly preserves the right of the appellant to raise its religious objections in a meaningful way. The appellant simply has not yet exercised that right and, at least until it does, no basis exists for further review of the case.

CONCLUSION

For the foregoing reasons, this Court should dismiss the appeal for want of a substantial federal question or, in the alternative, summarily affirm.

Respectfully submitted.

CONNECTICUT COMMISSION ON
HUMAN RIGHTS AND OPPORTUNITIES

Appellee

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APPENDIX

Motion to Dismiss — Grounds

The motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, and (5) insufficiency of service of process. This motion shall always be filed with a supporting memorandum of law, and where appropriate, with supporting affidavits as to facts not apparent on the record.

If an adverse party objects to this motion he shall, at least five days before the motion is to be considered on the short calendar, file and serve in accordance with Sec. 120 a memorandum of law and, where appropriate, supporting affidavits as to facts not apparent on the record. An adverse party who fails timely to file such a memorandum pursuant to this section shall be deemed by the court to have consented to the granting of the motion.